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of his age," and that the presumption must be overcome by evidence establishing his intelligence, maturity, and capacity before contributory negligence could be relied on as a defense, was confusing and misleading.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 37, Negligence, §§ 382-394.]

2. Street Railroads—Collision with Pedestrian—Last Clear Chance.—The doctrine of "last clear chance" has no application where one struck by a street car came out into the space between the two tracks, and into the view of the motorman, from behind a team on the other track, just as the car reached that point.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 44, Street Railroads, § 219.]

3. Appeal and Error—Review—Harmless Error—Conflicting Instructions.—Where there were conflicting instructions, the jury cannot be held to have followed those which were correct, and so rendered harmless the error in the others.

CREECY et al. v. GRIEF et al.

June 11, 1908.

[61 S. E. 769.]

1. Specific Performance—Grounds of Remedy—Discretion of Court.—The jurisdiction of equity to decree the specific performance of contracts may not be invoked as a matter of right, but every application therefor is addressed to the sound discretion of the court.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 44, Specific Performance, §§ 17, 18.]

2. Same—Contracts Enforceable—Certainty.—To entitle one to the specific performance of a contract, he must prove the contract by satisfactory evidence.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 44, Specific Performance, §§ 387-395.]

3. Contracts—Essentials—Meeting of Minds.—There is no contract unless the minds of the parties have met and mutually agreed.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 11, Contracts, §§ 71-93.]

4. Specific Performance—Contracts Enforceable.—Specific performance of a contract will not be decreed in the absence of proof of a clear mutual understanding and a positive assent to the contract on the part of each party; and, where the court is unable from the circumstances to say whether the minds of the parties met on the essential particulars, or cannot say exactly on what substantial terms they agreed, specific performance will be refused.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 44, Specific Performance, §§ 89-99.]

5. Same—Evidence—Sufficiency.—Evidence in a suit for the specific performance of a contract for the sale of real estate held not to establish the terms of the contract with clearness essential to the relief demanded.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 44, Specific Performance, §§ 387-395.]

COLONNA DRY DOCK CO. *v.* COLONNA.

June 11, 1908.

[61 S. E. 770.]

1. Appeal and Error—Harmless Error—Errors Not Affecting Result—Refusal of Rehearing—Cumulative Evidence.—The refusal of the circuit court to grant a rehearing for the submission of cumulative evidence, which could not change the result, is not ground for reversal.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 3, Appeal and Error, § 4033.]

2. Specific Performance—Discretion of Court.—An application to the court to compel specific performance is addressed to its sound judicial discretion, regulated by established principles.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 44, Specific Performance, §§ 17-18.]

3. Same—Contracts Enforceable.—Before equity will specifically enforce a contract, the contract must be distinctly proved, clearly and distinctly ascertained, and must be reasonable, certain, legal, and mutual, founded on at least a meritorious consideration, and the party seeking specific performance must not have been backward, but ready, desirous, prompt, and eager.

4. Same.—Where the court is unable from all the circumstances to say whether the minds of the parties met on all the essential particulars of the contract, or, if they did, cannot say on what substantial terms they agreed, specific performance will be refused.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 44, Specific Performance, §§ 86-99.]

5. Same—Evidence.—Evidence held not to establish a contract for the sale of real estate with the degree of certainty required to enable the court to decree its specific performance.

6. Equity—Jurisdiction—Ancillary Jurisdiction—Award of Damages.—Equity cannot undertake to give damages, save ancillary or auxiliary to some one of the recognized subjects of jurisdiction, and then only such damages are awarded as may be necessary to do full justice by way of compensation.

7. Damages—Breach of Agreement to Pay Money—Measure of Recovery.—Damages for breach of an agreement to pay money are capable of exact measurement in contemplation of law, and the